

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT**

**Cr. Revision No. 164-P/2018**

**JUDGMENT**

**Date of hearing** : 10<sup>th</sup> June, 2019.

**Petitioner(Nihad Ali)** : By Mr. Ishfaq Ahmad Afridi,  
Advocate.

**Respondent(s):**

**The State** : By Syed Sikandar Hayat Shah,  
AAG.

**Said Ali** : By Mr. Yousaf Shah Mohmand,  
Advocate.

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**QAISER RASHID KHAN, J.-** Through the instant revision petition, the petitioner has expressed his grievance against the judgment and order dated 6.12.2018 of the learned Additional District & Sessions Judge-III, Mardan, whereby, his application for reframing of charge against the accused-respondent in the ordinary court as he was not juvenile at the time of the commission of the offence has been turned down.

2. The learned counsel for the petitioner vehemently urges is that the learned trial court did not properly appreciate

the record while declining the request of the petitioner in respect of framing of charge against the accused-respondent in the ordinary court as he was not juvenile at the time of the commission of the offence. Further contends that the accused-respondent was major at the time of the commission of the offence as the occurrence took place on 7.5.2017 while as per the documentary evidence available on file, his age was over 19 years and as such, the impugned order of the learned trial court may be set-aside and his case be sent for trial before the court of competent jurisdiction.

3. The learned counsel for the accused-respondent on his turn supports the impugned order and states that the charge was framed against the accused-respondent way back on 29.08.2017, whereby, his age was held to be 15/16 years and he was tried accordingly. Further contends that the petitioner has moved the instant application for framing of charge against the accused-respondent in the ordinary court at the belated stage when the case is ripe for final arguments. He lastly argues that the learned trial court has legally framed the charge against the accused-respondent under the Juvenile Justice System

Ordinance, 2000 and proceeded with the trial in accordance with law.

4. Arguments heard and the available record perused.

5. As per the record, the accused-respondent stands charged in case FIR No.323 dated 7.5.2017 under section 302 PPC of police station Rustam, District Mardan with the allegations that he had fired at the complainant namely Akhtar Ali with which he was hit and later on succumbed to the injuries. The record further suggests that the accused-respondent was arrested by the local police on the same very day i.e. 7.5.2017 and according to the card of arrest, his age is 19 years. It appears that the learned trial court seriously erred under the law at the time of framing of charge by holding the accused-respondent as a Juvenile i.e. 15/16 years of age.

On 16.10.2018, during the course of prosecution evidence, the learned counsel for the petitioner preferred an application for re-framing of charge against the accused-respondent in the ordinary court with the plea that he was major at the time of the commission of the offence. Such application was turned down by the learned trial court through the

impugned judgment and order dated 6.12.2018. Thereafter, on 13.12.2018 the prosecution closed its evidence.

6. When this petition came up for hearing before this court and keeping in view the contentious issue involved in the matter in respect of the actual age of the accused-respondent at the time of the commission of the offence, it was deemed appropriate to direct for the constitution of a fresh Medical Board, where the accused-respondent was accordingly examined on 24.04.2019, which held the age of the accused-respondent to be 19-21 years. More so, as per the CNIC issued in the name of the accused-respondent by the NADRA, his date of birth is 12.03.1998. Likewise, the college card of the accused-respondent issued by the Government Degree College, Khair Abad, Mardan, annexed with the instant petition, also shows his date of birth as 12.03.1998.

The available circumstances and record clearly suggest that at the time of the commission of the offence, the accused-respondent was major i.e. over 18 years of age and thus, should not have been tried by the Juvenile Court under the Juvenile Justice System Ordinance, 2000.

7. In view of the foregoing discussion, this criminal revision petition is allowed, the impugned judgment and order of the learned trial court dated 6.12.2018 is hereby set-aside and the case of the accused-respondent is remitted to the ordinary court for de novo trial in accordance with law.

8. At the tail end of the arguments, the learned counsel for the accused-respondent requested that ever since the arrest of the accused-respondent on 7.5.2017, he has been in perpetual incarceration and that he could not be blamed for his trial by the learned juvenile court.

In view of such request made by the learned counsel for the accused-respondent, the learned trial court is directed to conclude the trial expeditiously.

**Announced.**

**Dated: 10.06.2019.**

**Senior Puisne Judge**